



## State of Idaho

### DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

August 6, 1999

VIA FAX

DIRK KEMPTHORNE  
GOVERNOR

KARL J. DREHER  
DIRECTOR

Ronald A. Schnabel, General Manager  
Big Lost River Irrigation District  
P.O. Box 205  
Mackay, Idaho 83251

Re: Suggestions for addressing storage overdrafts

Dear Mr. Schnabel:

Your letter of August 4, 1999, indicates that although the overall water supply available in the Big Lost River Basin is adequate this year, some users have diverted water in excess of their storage allocations. Your letter indicates that some users continue to receive water even though they do not have decreed rights, ground water rights or stored water to cover their diversions. You have asked for suggestions on how to allow these users to bring their water use into compliance with the storage allocations and successfully finish the irrigation season.

During the conference call with you and the Big Lost River Irrigation District (BLRID) Board earlier this week, we discussed the following ideas to remedy the overdraft problem and allow the users to complete the irrigation season: 1) pumping ground water for credit, 2) releasing stored water during the irrigation season to draft the reservoir to allow repair of the outlet gates, and 3) marketing stored water. The following is my understanding of and reaction to each of these ideas:

1. Pumping ground water for credit. The idea of pumping for credit has several variations. One variation involves pumping ground water into a canal, the river, or a tributary for use by either an identified holder of a surface right or storage allocation or to increase the surface water supply in general. In return, the person supplying the ground water receives a credit in BLRID's accounts. Ground water has been diverted from a well owned by the person receiving the pump credit or from a well owned by another who received compensation or some other incentive to divert the ground water on behalf of the person receiving the pump credit.

While pumping for credit has occurred in the past, IDWR has found the practice not to be in accordance with applicable law. The elements of a water right limit its diversion and use to the recorded point of diversion and place and nature of use. Diverting ground water for irrigation of some other place of use cannot be authorized without either processing an exchange or a transfer in accordance with Idaho law.

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Another variation of pumping for credit is that suggested by Dave Nelson during the telephone discussion. This variation involves diverting ground water from a supplemental well for use on the land authorized to be irrigated while receiving rotation credit for "storing" water from a decreed right that could have been used to irrigate the same land. The simultaneous use of a ground water right and a decreed right associated with the same land must not exceed the combined diversion rate listed in the partial decree of the rights. The Idaho Department of Water Resources (IDWR) cannot authorize pumping for credit if the combined diversion rate limitation is exceeded.

Given the limitations described above, it is unlikely that pumping for credit is a workable solution for the situation that now exists.

2. Releasing stored water to draft the reservoir for gate repair. Unless the condition of the outlet gates requires immediate action to protect the integrity of the structure, stored water allocated to BLRID patrons should not be released prior to the end of the irrigation season. When stored water is released to evacuate the dam and is not designated for use in accordance with the allocations made under the right to store the water, it becomes natural flow subject to diversion in accordance with the priority of rights.

If you consider the condition of the gates to require immediate attention, please give notice to IDWR so that our Safety of Dams Section personnel can coordinate with you on the matter. If early release is necessary, the storage allocations to the patrons would need to be adjusted. How this should be done is the responsibility of the BLRID. Guidance from the board's attorney may be useful in ensuring that the rights of the patrons are protected.

3. Marketing stored water. Water stored under BLRID's rights may be used anywhere within the place of use authorized under the rights. Use of stored water within the parameters of the water right is under the control of BLRID. BLRID can allow its patrons to market water for use within the district within the terms of the water right. BLRID can choose to encourage and facilitate marketing by providing clearinghouse services or it can leave it to those needing water to find those who have stored water in excess of their needs.

Use of BLRID water outside of the district cannot occur unless the water is excess to the needs of the district and approval to change the place of use is obtained from IDWR in accordance with state law. Permanent changes in place of use can be obtained using Section 42-222 or 43-323, Idaho Code. A temporary, expedited change can be made using the water banking authority of the Idaho Water Resource Board. If the water banking approach is of interest, I will be happy to provide additional information.

Ronald A. Schnabel  
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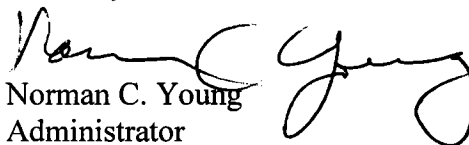
Guidance from your attorney may be needed relative to when and how stored water can be declared to be in excess of the needs of the district. A need to draft the reservoir to repair a gate may be a consideration in allowing a determination to be made that excess water exists.

In summary, of the various ideas, the marketing of water between those having extra storage and those needing water to cover overdrafts and to finish irrigating their crops seems to provide the best resolution to the matter.

As a final comment, I am concerned by statement number 9 in your letter which advises that, "Water users that do not have decrees on, and have no supplemental wells, storage water, or rotation credits are still being delivered water and accumulating overdrafts." It is vital that the watermaster and BLRID personnel prevent unauthorized diversions of water. If the watermaster has determined that a right holder, who is a patron of the BLRID, does not have natural flow or ground water available under his rights and the BLRID has determined that the patron does not have stored or rotation credit water, the BLRID ditchrider, with guidance from the watermaster, should immediately adjust the headgate to the BLRID canal to prevent excessive diversion from the river and should stop the patron's diversion from the canal. If the patron's natural flow right comes back into priority or a water supply is obtained by some authorized means, the diversion can then be restored.

I appreciate the efforts of the board and you, as manager, to effectively serve your patrons and to comply with state law. IDWR will provide you with whatever support we are authorized to give.

Sincerely,



Norman C. Young  
Administrator  
Water Management Division

- c. Doug Rosenkrance, Watermaster Water District 34  
Ron Carlson, Eastern Region, IDWR  
Tim Luke, IDWR



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DIRK KEMPTHORNE

Governor

KARL J. DREHER

Director

FAX TRANSMITTAL COVER SHEET

DATE: Aug 6, 1999

TO: Don Schnabel

(208) 588-2863

Doug Rosenkrance

(208) 588-2247

FROM: Norm Young

DOCUMENT DESCRIPTION: letter

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